

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS JACK MCNINCH,
Plaintiff,

v.

SPUR et al.,

Defendants.

Case No. 21-12671

Honorable Shalina D. Kumar

Magistrate Judge Curtis Ivy, Jr.

**ORDER ADOPTING REPORT AND RECOMMENDATION (ECF NO. 18),
GRANTING DEFENDANTS' MOTION TO DISMISS (ECF NO. 10) AND
DENYING PLAINTIFF'S MOTION TO WAIVE FILING DEADLINE (ECF
NO. 15)**

Pro se plaintiff Thomas Jack McNinch, most recently incarcerated at the Federal Medical Center in Fort Worth, Texas, filed a *Bivens* action against several federal prison officials alleging Eighth and Fourteenth Amendment violations based on a deliberate indifference to a substantial risk of serious harm to inmates. ECF No. 1. This case was referred to the magistrate judge for all pretrial matters pursuant to 28 U.S.C. Section 636(b). ECF Nos. 11, 13. Defendants filed a motion to dismiss, McNinch filed a response, and defendant filed a reply. ECF Nos. 10, 14, 16. Plaintiff also filed a motion to extend the filing deadline relating to a Federal Tort Claims Act (FTCA) claim. ECF No. 15.

On July 14, 2022, the assigned magistrate judge issued a Report and Recommendation (“R&R”). ECF No. 18. The R&R recommends that the Court grant defendants’ motion to dismiss and deny plaintiff’s motion to waive filing deadline as moot. *Id.* No party has filed an objection to the R&R.

The Court has reviewed the record and **ADOPTS** the R&R relative to defendants’ motion to dismiss as the findings and conclusions of the Court. The Court agrees that plaintiff’s motion relating to an FTCA claim should be denied as moot because the action before the Court does not include a claim (or the proper defendant) under the FTCA. *See Allgeier v. United States*, 909 F.2d 869, 871 (6th Cir. 1990) (“Failure to name the United States as defendant in an FTCA suit results in fatal lack of jurisdiction.”).

Accordingly,

IT IS ORDERED that defendants’ motion to dismiss (ECF No. 10) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff’s motion to waive the deadline to file an FTCA claim (ECF No. 15) is **DENIED** as moot.

IT IS FURTHER ORDERED that this case is **DISMISSED**.

Dated: September 28, 2022

s/Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge